



# Law Enforcement

July 1997

# Digest

## HONOR ROLL

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### **459th Session, Basic Law Enforcement Academy - March 12, 1997 through June 3, 1997**

President: Timothy M. McDonald - King County Department of Public Safety  
Best Overall: James M. Watson - Vancouver Police Department  
Best Academic: Michelle L. Sotta - Pierce County Sheriff's Office  
Best Firearms: Jason G. Southard - Monroe Police Department  
Tac Officer: Bradley Graham - Tacoma Police Department  
Asst. Tac Officer: Pat Lowery - Kent Police Department

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### **Corrections Officer Academy - Class 249 - April 21, 1997 through May 16, 1997**

Highest Overall: April S. Pliier - Washington Corrections Center for Women  
Highest Academic: Roy K. Baker - Washington State Reformatory  
April S. Pliier - Washington Corrections Center for Women  
Highest Practical Test: Roy K. Baker - Washington State Reformatory  
Highest in Mock Scenes: Kelvin D. Lawson - Twin Rivers Corrections Center  
April S. Pliier - Washington Corrections Center for Women  
Michael Manuel Silva - Twin Rivers Corrections Center  
Bobby Joe York - McNeil Island Corrections Center  
Highest Defensive Tactics: April S. Pliier - Washington Corrections Center for Women

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### **Corrections Officer Academy - Class 250 - April 28, 1997 through May 23, 1997**

Highest Overall: Patrick M. Matthews - Thurston County Jail  
Highest Academic: Gary R. Allen - Lewis County Corrections  
Highest Practical Test: Diane C. Anthony - McNeil Island Corrections Center  
Dennis S. Lusby - Grays Harbor County Jail  
Patrick M. Matthews - Thurston County Jail  
Andre D. Muldrew - Thurston County Jail  
Highest in Mock Scenes: Eric B. Baker - McNeil Island Corrections Center  
David R. Base II - Washington State Penitentiary  
Peggy Lynn Cullum - Twin Rivers Corrections Center  
Tonya E. Frost - Washington Corrections Center

Highest Defensive Tactics: Ethan C. Green - Washington State Penitentiary  
 Patrick M. Matthews - Thurston County Jail  
 Timothy H. Jones - Bellevue City Jail

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**Corrections Officer Academy - Class 251 - April 28, 1997 through May 23, 1997**

Highest Overall: Kenneth C. Ullom - Grays Harbor County Jail  
 Highest Academics: Brian L. Thompson - Lewis County Corrections  
 Highest Practical Test: John R. Leppell - Airway Heights Corrections Center  
 John Pennington - McNeil Island Corrections Center  
 Brian L. Thompson - Lewis County Corrections  
 Kenneth C. Ullom - Grays Harbor County Jail  
 Bonnie Marie West - McNeil Island Corrections Center  
 Highest in Mock Scenes: Heidi Christine Miller - Washington Corrections Center for Women  
 Jose Luis Reyna - Twin Rivers Corrections Center  
 Highest Defensive Tactics: Russell E. Bishop - Airway Heights Corrections Center

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**JULY LED TABLE OF CONTENTS**

**1997 WASHINGTON LEGISLATIVE ENACTMENTS-- PART ONE..... 2**

**BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS ..... 18**

**“SEXUAL EXPLOITATION OF MINOR” PROVISION IN CHAPTER 9.68A DOES NOT INCLUDE SECRETLY VIDEOTAPING A MINOR TAKING A BATH**  
**State v. Grannis, 84 Wn. App. 546 (Div. II, 1997) ..... 18**

**1994 FEDERAL GUN LAW AMENDMENTS -- RESTRAINING ORDER RESTRICTIONS..... 20**

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**LED EDITOR'S INTRODUCTORY NOTE: This is Part One of what we expect to be a two-part update of 1997 Washington State legislative enactments of interest to law enforcement. We believe that we have included in Part One most of the significant 1997 enactments of special interest to law enforcement. Part Two next month will provide: (A) follow-up notes on Part One enactments; (B) information regarding any enactments of interest that may have been overlooked in Part One; and (C) an index of the 1997 enactments addressed in Parts One and Two.**

**We have tried to incorporate RCW references in our summaries, but where new sections or chapters are created, the State Code Reviser must assign appropriate code numbers, a process that likely will not be completed until early fall. As always, we remind our readers that any legal interpretations that we express in the LED do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.**

## **CRIMINAL CONSPIRACY-- INVOLVEMENT OF LAW ENFORCEMENT AGENT**

CHAPTER 17 (SB 5085)

Effective Date: July 27, 1997

Amends RCW 9A.28.040(2) to provide that it is not a defense to a criminal conspiracy charge that the person(s) with whom the accused is alleged to have conspired is a law enforcement officer or other government agent who did not intend that a crime be committed. This amendment responded to and corrected the Washington State Supreme Court decision in State v. Pacheco, 125 Wn.2d 150 (1994) Feb. '95 LED:07.

## **UCSA SENTENCE ENHANCEMENT-- "SCHOOL BUS ROUTE STOP"**

CHAPTER 23 (SB 5123)

Effective Date: July 27, 1997

Amends the UCSA sentence enhancement provisions of RCW 69.50.435 to simplify the definition of "school bus route stop" to read: " a school bus route stop as designated by a school district".

## **INTIMIDATION OF WITNESSES-- CLARIFICATION**

CHAPTER 29 (SB 5520)

Effective Date: July 27, 1997

Amends RCW 9A.72.110 (intimidation of witnesses -- a class B felony) in fairly comprehensive manner to clarify and broaden protection for a "current or prospective witness" and for a "former witness". Definitions of each of these terms are added to this section. The purpose of the changes was to clarify existing protection for these classes of persons, and to extend protection beyond that currently provided to include persons who a perpetrator: (1) believes may be called in an official proceeding, or (2) believes may have been called if a hearing or trial had been held. The Legislature did not make similar changes in coverage of the other witness protection statutes (e.g. tampering, bribing.)

## **UCSA SENTENCE ENHANCEMENT--"PUBLIC HOUSING"**

CHAPTER 30 (SB 5672)

Effective Date: July 27, 1997

Amends the UCSA sentence enhancement provisions of RCW 69.50.435 for those who commit certain drug crimes in certain types of areas; by adding sentence enhancement for committing the covered crimes in public housing projects which have been designated by local governing authorities as drug free zones.

## **VEHICLE: ALLOWABLE OUTSIDE WIDTH**

CHAPTER 63 (SB 5155)

Effective Date: July 27, 1997

Amends RCW 46.44.010 to increase by one inch the amount by which appliances or appurtenances may extend beyond the extreme limits of a vehicle's body.

## **DRIVING STATUTES-- UNLICENSED, NEGLIGENT DRIVERS**

CHAPTER 66 (SB 5060)

Effective Date: July 27, 1997

Amends various provisions relating to driving in unlicensed status and relating to negligent driving. The following described or excerpted changes in sections 1 through 5 of the Act are generally mere technical changes to eliminate confusion for police and the courts.

Section 1 adds a new section to chapter 46.20 RCW reading as follows:

Except as expressly exempted by this chapter, it is a misdemeanor for a person to drive any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter. This section does not apply if at the time of the stop the person is not in violation of RCW 46.20.342(1) or 46.20.420 and has in his or her possession an expired driver's license or other valid identifying documentation under RCW 46.20.035. A violation of this section is a lesser included offense within the offenses described in RCW 46.20.342(1) or 46.20.420.

Section 2 adds a new section to chapter 46.20 reading as follows:

Except as expressly exempted by this chapter, it is a traffic infraction and not a misdemeanor under section 1 of this act for a person to drive any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter in his or her possession if the person provides the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop and the person is not in violation of RCW 46.20.342(1) or 46.20.420. A violation of this section is subject to a penalty of two hundred fifty dollars. If the person appears in person before the court or submits by mail written proof that he or she obtained a valid license after being cited, the court shall reduce the penalty to fifty dollars.

Section 3 amends RCW 46.20.021 by deleting subsection (1), the substance of which has been replaced by sections 1 and 2 of the Act set forth above.

Section 4 of the Act adds a new section to chapter 46.61 RCW, and section 5 of the Act amends RCW 46.61.525 which current addresses negligent driving in both the first and second degrees. The effect of these two amending sections of the 1997 Act is to separate out "negligent driving in the first degree" ( this misdemeanor is covered in the new section in chapter 46.61) and "negligent driving in the second degree" (this traffic infraction continues to be covered in RCW 46.61.525). Sections 4 and 5 do not appear to make any significant substantive changes in the law relating to negligent driving in the first or second degrees.

Section 10 amends RCW 10.31.100(3) to clarify that negligent driving in the first degree (not negligent driving in the second degree) is the crime addressed there (and hence is the only "negligent driving" offense for which custodial arrest or citation on probable cause is authorized).

Section 13 amends the jurisdictional provision of RCW 46.61.005 to clarify that both negligent driving one and two are among the offenses to which the traffic code applies both on and off the highways.

## **METHAMPHETAMINE CRIMES-- FINES FOR CLEANUP COSTS**

CHAPTER 71 (SSB 5191)

Effective Date: January 27, 1997

Amends RCW 69.50.401(a)(1)(ii) and 69.50.440 to provide that \$3000 of fines for crimes relating to methamphetamine, ephedrine, or pseudoephedrine cannot be suspended, and providing further in each section as follows:

As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost.

## **PROFESSIONAL GAMBLING DEFINITION**

CHAPTER 78 (SB 5422)

Effective Date: January 27, 1997

Amends RCW 9.46.0269 (adding a subsection to the definition of "professional gambling"); 9.46.220 (amending the provisions establishing the crime of "professional gambling in the first degree"); and 9.46.221 (amending the provisions establishing the crime of "professional gambling in the second degree").

## **PASSING SCHOOL BUSES-- FINES DOUBLED**

CHAPTER 80 (SSB 5470)

Effective Date: January 27, 1997

Amends RCW 46.61.370 (which relates to unlawfully passing school busses) to provide in newly added subsection (6):

A person found to have committed an infraction of subsection (1) of this section shall be assessed a monetary penalty equal to twice the total penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended. Fifty percent of the money so collected shall be deposited into the school zone safety account in the custody of the state treasurer and disbursed in accordance with RCW 46.61.440(3).

## **LIMITATIONS PERIOD LIMITLESS FOR VEHICLE DEATH CASES**

CHAPTER 97 (HB 1067)

Effective Date: January 27, 1997

Amends RCW 9A.04.080(1)(a) to add the following new crimes to the current list of death-involved crimes for which the statute of limitations never runs: (i) vehicular homicide, (ii) vehicular assault if a death results, (iii) hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

## **NO DISABILITY RETIREMENT WHERE DISABILITY RESULT OF CRIME**

CHAPTER 103 (SHB 1550)

Effective Date: April 21, 1997

Amends chapters 41.26, 41.32, and 41.40 RCW (retirement statutes governing local police and firefighters, state employees, and teachers) to prohibit members from receiving disability retirement benefits where their disability "is the result of criminal conduct by the member" committed after April 21, 1997.

## **HARASSMENT AND THREATS TO DO IMMEDIATE BODILY INJURY**

CHAPTER 105 (HB 1636)

Effective Date: July 27, 1997

Amends RCW 9A.46.020(1)(a)(i) to provide that threats to cause either future or immediate bodily injury are covered by the harassment statute. This amendment responds to and corrects for the result of the court decision in Seattle v. Allen, 80 Wn. App. 824 (Div. I, 1996) Sept. '96 LED:19 (in Allen the Court had interpreted the then-existing statute to not include threats of immediate bodily injury).

## **REGISTRATION OF CHILD KIDNAPPERS, SEX EXPLOITERS, OTHERS**

CHAPTER 113 (SSB 5621)

Effective Date: July 27, 1997

Amends various statutes previously limited to **sex offender** registration to add the following crimes to the existing list for which offenders must register with local law enforcement agencies upon release from DOC custody: (a) kidnapping 1 and 2 and unlawful imprisonment (non-parental); (b) the following crimes in chapter 9.68A RCW-- sexual exploitation of a minor, dealing in depictions of minors engaged in sexually explicit conduct, sending or bringing into the state such depictions, communication with a minor for immoral purposes, and patronizing a juvenile prostitute; and (c) an additional 9A.44 crime, sexual misconduct with a minor in the second degree.

All of the requirements currently imposed on sex offenders who must register also apply to the new categories of offenders who must register under this Act.

## **GAMBLING-- DEFINING "SOCIAL CARD GAME"**

Chapter 118 (SSB 5560)

Effective Date: July 27, 1997

Adds a new section to chapter 9.46 RCW defining "social card game" as follows:

"Social card game" as used in this chapter means a card game that constitutes gambling and is authorized by the commission under RCW 9.46.070. Authorized card games may include a house-banked or a player-funded banked card game. No one may participate in the card game or have an interest in the proceeds of the card game who is not a player or a person licensed by the commission to participate in social card games. There shall be two or more participants in the card game who are players or persons licensed by the commission. The card game must be played in accordance with the rules adopted by the commission under RCW 9.46.070, which shall include but not be limited to rules for the collection of fees, limitation of wagers, and management of player funds. The number of tables authorized shall be set by the commission but shall not exceed a total of fifteen separate tables per establishment.

This amendment and an amendment to the definition of "player" in this Act will authorize a card room operator to conduct card games such as house-banked or player-funded banked card games or other card games approved by the Gambling Commission.

## **MALICIOUS USE OF EXPLOSIVES AND FAKE EXPLOSIVES**

CHAPTER 120 (SHB 1069)

Effective Date: July 27, 1997

Amends existing sections in chapter 70.74 RCW and adds new sections to that chapter. Three degrees of "malicious placement of an explosive" are established in RCW 70.74.270 and are classified as class A, B, and C felonies, respectively. Three degrees of "malicious explosion of a substance" are established in RCW 70.74.280 and are classified as class A, A and B felonies, respectively. A new crime of "malicious placement of an imitation device" is added under a new section in chapter 70.74 RCW, with two degrees classified as B and C felonies; a definition of "imitation device" states that the term means:

a device or substance that is not an explosive or improvised device, but which by appearance or representation would lead a reasonable person to believe that the device or substance is an explosive or improvised device.

All three of these crimes make it a first degree violation if there is an element of a terrorist act involved. "Terrorist act" is defined as follows:

an act that is intended to: (1) intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch or level of government by intimidation or coercion; or (4) retaliate against a branch or level of government for a policy or conduct of the government.

**COLLECTION OF CRIMINAL COURT AND JUVENILE COURT JUDGMENTS**

CHAPTER 121 (EHB 1096)

Effective Date: July 27, 1997

Amends various statutes in chapters 6.17, 9.94A, and 13.40 RCW to allow for extension of the periods for collection against offenders by persons who are the beneficiaries of restitution orders issued by adult criminal courts or juvenile courts.

**GAMBLING-- FORFEITURE OF PROPERTY**

CHAPTER 128 (SHB 1364)

Effective Date: July 27, 1997

Amends the property forfeiture provision in the gambling act statute at RCW 9.46.231 with clarifying and housekeeping amendments. Among other things, the amendments conform the law to other Washington forfeiture statutes and to help ensure that due process requirements are met.

**"AT RISK" YOUTH: LAW ENFORCEMENT CUSTODY**

CHAPTER 146 (SB 5578)

Effective Date: July 27, 1997

Amends various sections in chapter 13.32A RCW. These amendments are clarifications or corrections to the "Family Reconciliation Act" adopted in 1995 and substantially amended in 1996. For analysis of the 1995 Act (also known as the "BECCA BILL"), see the **July '97 LED at 2-7**. For analysis of the 1996 amendments (known as "BECCA TOO"), see the **June '96 LED at 6-7**.

Section 2 of the 1997 Act amends the provision of subsection (2) of RCW 13.32A.050 relating to continuation of custody by adding two sentences reading as follows:

Law enforcement custody continues until the law enforcement officer transfers custody to a person, agency, or other authorized entity under this chapter, or releases the child because no placement is available. Transfer of custody is not complete unless the person, agency, or entity to whom the child is released agrees to accept custody.

Section 3 of the 1997 Act amends subsection (1)(c) of RCW 13.32A.060 by adding the following documentation requirement for law enforcement personnel following acceptance by DSHS of custody of a child:

Upon transferring a child to the department's custody, the officer shall provide written documentation of the reasons and the statutory basis for taking the child into custody.

Also in section 3 of the 1997 Act is an amendment inserting a new subsection (3) in RCW 13.32A.060, clarifying what DSHS must do after a law enforcement officer transfers custody:

Whenever an officer transfers custody of a child to a crisis residential center or the department, the child may reside in the crisis residential center or may be placed by the department in an out-of-home placement for an aggregate total period of time not to exceed seventy-two hours excluding Saturdays, Sundays, and holidays. Thereafter, the child may continue in out-of-home placement only if the parents have consented, the child in need of services petition has been filed under this chapter, or an order of placement has been entered under chapter 13.34 RCW.

## **LITTERING WITH LIT CIGARETTES**

CHAPTER 159 (SHB 1429)

Effective Date: July 27, 1997

Amends RCW 70.93.060 to make it a class 1 civil infraction under chapter 7.80 RCW "to discard... a cigarette, cigar, or other tobacco product that is capable of starting a fire." Amends RCW 7.80.120 to provide that the class 1 civil infraction relating to lit tobacco products is to have a maximum penalty of \$500.

## **ASSAULT IN THE THIRD DEGREE AGAINST HEALTH CARE PERSONNEL**

CHAPTER 172 (SB 5681)

Effective Date: July 27, 1997

Amends RCW 9A.36.031 to add to the categories of persons protected by the assault in the third degree statute "nurses", "physicians", and "health care providers" who were performing their nursing or health care duties at the time of the assault. The classes of providers in quotes in the preceding sentence are defined by reference to the provisions of the pertinent professional licensing statutes in Title 18 RCW.

## **THEFT FROM TAX EXEMPT ENTITY: STATUE OF LIMITATIONS**

CHAPTER 174 (SB 5724)

Effective Date July 27, 1997

Amends RCW 9A.04.080 by adding a subsection (1)(g) to establish a three-year, "discovery" rule as the limitations period for prosecuting thefts from charitable and other organizations exempt from federal income taxation. The new subsection provides:

A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501 (c)(3).

## **FIREWORKS LAW**

CHAPTER 182 (ESSB 5970)

Effective Date: April 23, 1997

Increases the responsibility of the WSP in relation to fireworks regulation, which is generally preempted under state law. The 1997 Act makes changes in a number of sections of chapter 70.77 RCW relating to regulation of fireworks. At LED deadline, litigation was in process over WSP emergency regulations adopted under this 1997 legislation. By the time our readers receive this month's LED, this year's fireworks sale season will be over, so your LED Editor has decided not to provide details on the fireworks law at this time.

## **ASSAULT BY HIV VIRUS; HOMICIDE EXPANSION: NO LIMIT RE DATE OF DEATH**

CHAPTER 196 (ESSB 5044)

Effective Date: July 27, 1997

Amends the statutes defining first degree assault (RCW 9A.36.011) and second degree assault (RCW 9A.36.021) by deleting the references in the second degree assault statute to "administering" the HIV virus and inserting in the first degree assault statute references to "exposing" persons to the HIV virus, or "transmitting" the HIV virus to persons. Thus, the first degree assault statute now addresses these acts; the existing first degree assault mental state of "intent to inflict great bodily harm" is not changed by this amendatory Act.

In an amendment which applies to all manner of homicides, no matter how caused, the Act amends RCW 9A.32.010 to delete the existing time-of-death requirement. It will no longer be required that death occur "within three years and a day." Instead, the killing of another human being now is a homicide (which may be criminal or noncriminal) if the human-caused death occurs "at any time." Stated another way, under this change, a person's act or omission which proximately causes the death of another person is a homicide regardless of how many years have passed since the initial act or omission.

## **VEHICLES: MAXIMUM GROSS WEIGHT**

CHAPTER 198 (SB 5154)

Effective Date: July 27, 1997

Amends RCW 46.44.041's grid for maximum gross weight of vehicles.

## **FIREARMS "CASE AND CARRY" REQUIREMENT DROPPED**

CHAPTER 200 (SB 5326)

Effective Date: July 27, 1997

Amends RCW 9.41.050 by deleting in its entirety what was commonly known as the subsection (4) "case and carry" requirement with its many exceptions. Another amendment to RCW

9.41.050 amends subsection (1)(b) by changing references there from "chapter 7.84 RCW" to "chapter 7.80 RCW".

### **TWO-WAY LEFT TURN LANE USAGE-- 300 FOOT LIMIT**

CHAPTER 202 (SSB 5541)

Effective Date: July 27, 1997

Amends subsection (3) of RCW 46.61.290 relating to two-way left turn lane usage to provide that a vehicle may not travel more than 300 feet within the lane.

### **PROTECTING PORT DISTRICT POLICE FROM MALICIOUS LAWSUITS**

CHAPTER 206 (SB 5871)

Effective Date: July 27, 1997

Amends RCW 4.24.350, which provides qualified protection from malicious lawsuits of "law enforcement officers" and others in the criminal justice system, to include "port district" police officers in the definition of "law enforcement officer".

### **WILDLIFE VIOLATIONS-- FINES AND RESTITUTION**

CHAPTER 226 (SHB 1806)

Effective Date: July 27, 1997

Amends RCW 77.21.070 to establish "restitution" amounts to be assessed for certain wildlife crimes involving certain species, and making hunting licenses contingent upon payment of such restitution.

### **IGNITION INTERLOCKS**

CHAPTER 229 (EHB 1940)

Effective Date: January 1, 1998

Amends various provisions relating to ignition interlock devices in chapter 10.05 RCW (deferred prosecution) and in Title 46 RCW (traffic). Among the changes is the addition of a new subsection to RCW 46.20.740 providing:

It is a misdemeanor for a person with [an ignition interlock] notation on his or her driver's license to operate a motor vehicle that is not so equipped.

### **FOUND PROPERTY**

CHAPTER 237 (SHB 1166)

Effective Date: July 27, 1997

Amends RCW 63.21.010 relating to found property to establish: (a) that persons claiming found cash need not get an appraisal of its value, and (b) that where the value of a found item is less than the cost of newspaper ads to publish notice, then notice may be given in some other manner. Responsibility for publishing notice is shifted from the finder to the governmental unit that has jurisdiction over the location or territory where the property was found. Also amends RCW 63.21.030 to provide that, where a government agency publishes notice of the value of a found item, the government agency can recover: (a) a \$10 handling fee, plus (b) an additional fee to cover the costs of publication. However, if the value of the item is less than the cost of publication, then no fee may be assessed.

## **ACCIDENT REPORTS; REQUIREMENTS**

CHAPTER 248 (SSB 5539)

Effective Date: May 2, 1997

Amends RCW 46.52.030 to make two changes in accident report filing requirements applicable to citizens. First, in those circumstances where a law enforcement officer investigates an accident and is required to make a report under RCW 46.52.070, a citizen need not (but may at this or her option) file an accident report. Second, in those circumstances where a citizen is required to file a report (i.e. no investigation-related report by officer per RCW 46.52.070), the citizen now has four days, rather than 24 hours, to file the report.

## **NO TRUCKS IN THE FREEWAY FAST LANE**

CHAPTER 253 (SSB 5177)

Effective Date: July 27, 1997

Adds a subsection (3) to RCW 46.61.100 providing as follows:

No vehicle towing a trailer or no vehicle or combination over ten thousand pounds may be driven in the left-hand lane of a limited access roadway having three or more lanes for traffic moving in one direction except when preparing for a left turn at an intersection, exit, or into a private road or driveway when a left turn is legally permitted. This subsection does not apply to a vehicle using a high-occupancy vehicle lane. A high-occupancy vehicle lane is not considered the left-hand lane of a roadway. The department of transportation, in consultation with the Washington state patrol, shall adopt rules specifying (a) those circumstances where it is permissible for other vehicles to use the left lane in case of emergency or to facilitate the orderly flow of traffic, and (b) those segments of limited access roadway to be exempt from this subsection due to the operational characteristics of the roadway.

## **CHILD ABUSE--DSHS: PURGING UNFOUNDED REFERRALS & INFORMING ACCUSED**

CHAPTER 282 (SSB 5511)

Effective Date: July 27, 1997

Amends chapter 26.44 RCW to require that DSHS purge, after six years, information in child abuse/neglect files/reports if: (1) the information relates to "unfounded referrals, and (2) no new reports of abuse/neglect have been received within the past six years. "Unfounded" is defined as: "Available evidence indicates that, more likely than not, child abuse or neglect did not occur."

In an amendment to RCW 26.44.100 that is of interest to all law enforcement agencies, the Legislature has provided that DSHS must "notify the alleged perpetrator of the allegations of child abuse and neglect at the earliest possible point in the investigation that will not jeopardize the investigation process."

Additional amendments to RCW 26.44.100 provide that an accused person must be advised by DSHS of the investigation by the time of completion of the investigation. The accused person must also be advised by DSHS that he or she may file a written response for the record. Also, a person interested in working at a licensed child care agency may request an informal meeting with DSHS to discuss and contest the information in the record.

**CHILD ABUSE -- PROTECTING RIGHTS OF VICTIMS & WITNESSES; LAW ENFORCEMENT PERSONNEL MUST INFORM CHILDREN AS TO ADDRESS CONFIDENTIALITY**

CHAPTER 283 (SB 5538)

Effective Date: July 27, 1997

Adds a new section to chapter 7.69A RCW (the chapter protects the rights of child victims and witnesses) providing as follows:

**At the time of reporting a crime to law enforcement officials and at the time of the initial witness interview, child victims or child witnesses of violent crimes, sex crimes, or child abuse and the child's parents shall be informed of their rights to not have their address disclosed by any law enforcement agency, prosecutor's office, defense counsel, or state agency without the permission of the child victim or the child's parents or legal guardian.** The address may be disclosed to another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child. Intentional disclosure of an address in violation of this section is a misdemeanor.

**LICENSE PLATES-- LIMITING ISSUANCE OF SPECIAL PLATES**

CHAPTER 291 (SHB 1008)

Effective Date: July 27, 1997

Intending to make license plate design more uniform as an aid to law enforcement, this Act makes various changes in the traffic code to restrict issuance of new special license plates series, and allowing DOL to terminate series' where sales are nominal. Also, effective January 1, 2001, all license plates shall be thereafter issued with a standard background designated by DOL, except for the following: (1) collector plates issued prior to January 1, 1987; (2) Congressional Medal of Honor plates; (3) and plates issued for commercial vehicles with a gross weight in excess of 26,000 pounds.

**JUVENILES: ADULT COURT PROSECUTION; MISC; DRIVE-BYS; PRIVILEGE**

CHAPTER 338 (E3SHB 3900)

Effective Date: Various

By amendment to RCW 13.04.030, this 1997 Act adds the following crimes to those which presently automatically require adult court criminal prosecution when committed by 16 and 17 year-olds:

Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997

Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses

Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm

Also makes certain changes in sentencing laws, effective July 1, 1997, to make a juvenile offense history pertinent in more circumstances than was previously the case.

Amends RCW 9A.36.045 to change the name of the crime defined in that section from "reckless driving in the first degree" to "drive-by shooting," and makes a corresponding amendment to RCW 9A.36.050 to rename "reckless endangerment in the second degree" as simple "reckless endangerment." These changes are effective July 1, 1997. Various other statutes (including the firearms statute) making reference to "reckless endangerment" are corrected to accommodate these name changes.

Amends the law relating to attorney-client privilege in RCW 5.60.060(2) by providing a limited circumstance where the presence of a parent or guardian will not destroy the confidential nature of the communication between attorney and a child of the parent or guardian. The exception provides:

A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

A number of other changes in the laws relating to juveniles are made in this omnibus legislation.

### **SOME CHILD RAPES IN "TWO STRIKES" LAW**

CHAPTER 339 (SHB 1176)

Effective Date: July 27, 1997

Amends RCW 9.94A.030(27)'s definition of "persistent offender" for purposes of the "Two Strikes, You're Out" sex offender sentencing law. The amendment adds as possible "strikes" convictions for the crimes of rape of a child in the first degree and rape of a child in the second degree, with the following qualifiers:

A conviction for rape of a child in the first degree constitutes a conviction under [the Two Strikes law] only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under [the Two Strike law] only when the offender was eighteen years of age or older when the offender committed the offense.

### **JUVENILES-- PILOT PROJECT FOR CONCURRENT JURISDICTION**

CHAPTER 341 (HB 1922)

Effective Date: July 27, 1997

Amends the Juvenile Code (Title 13 RCW) to allow a "concurrent jurisdiction" pilot project in a county with a population between 200,000 and 350,000 and located east of the Cascades. With certain qualifications, this Act would allow the district and municipal courts in a pilot project county to exercise concurrent jurisdiction over juveniles who are the subject of traffic and civil infractions, truancy petitions, and misdemeanor charges.

### **CRIME VICTIM RIGHTS-- RIGHT TO ADVOCATE**

Amends RCW 7.69.030(10) (relating to crime victim rights) to expand the right to have a crime victim advocate present in criminal justice matters. Victims of violent and sex crimes presently have the right to have an advocate present at any prosecutorial or defense interviews with the victim; this 1997 amendment gives this class of victims the same right "at any judicial proceedings related to criminal acts against the victim."

## **CHILD ABUSE-- TREATMENT CAN'T BE TIED TO GUILT ADMISSION**

RCW 26.44.140 is amended to provide that, unless a parent, custodian, or guardian of a child is convicted of a crime for acts of abuse, the alleged abuser cannot be required to admit guilt in order to begin fulfilling court-ordered treatment or educational programs.

## **THEFT OF RENTAL PROPERTY**

This Act makes a fundamental change in the theft statute to allow prosecution for theft in a larger class of cases involving failure to return rental property. The Act repeals RCW 9A.56.095 (addressing failure to return rental property with a value over \$1500) and also repeals RCW 9.45.062 (addressing failure to deliver leased personal property). In place of these two statutes, this 1997 enactment creates a new section to be added to chapter 9A.56 RCW, broadly addressing theft of rental property as follows:

(1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented or leased to the person, is guilty of theft of rental, leased, or lease-purchased property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

(a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, or lease-purchase agreement; or

(b) That the renter or lessee presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental,

lease, or lease-purchase period, mailed by certified or registered mail to the renter or lessee at: (a) The address the renter or lessee gave when the contract was made; or (b) the renter or lessee's last known address if later furnished in writing by the renter, lessee, or the agent of the renter or lessee.

(4) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, or lease-purchased property. Theft of rental, leased, or lease-purchased property is a : Class B felony if the rental, leased, or lease-purchased property is valued at one thousand five hundred dollars or more; class C felony if the rental, leased, or lease-purchased property is valued at two hundred fifty dollars or more but less than one thousand five hundred dollars; and gross misdemeanor if the rental, leased, or lease-purchased property is valued at less than two hundred fifty dollars.

(5) This section applies to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any minimum rental fee, to lease agreements, and to lease-purchase agreements as defined under RCW 63.19.010. This section does not apply to rental or leasing of real property under the residential landlord-tenant act, chapter 59.18 RCW.

## **CRIMINAL JUSTICE TRAINING COMMISSION**

CHAPTER 351 (E2SHB 1423)

Effective Date: May 13, 1997

New sections are added to chapter 43.101 RCW creating two boards which are advisory to the Criminal Justice Training Commission: (1) the Board on Correctional Training Standards and Education, and (2) the Board of Law Enforcement Training Standards and Education.

Also adds a new section to chapter 43.101 RCW to require supervisory and management training for "all law enforcement personnel initially hired to, transferred to, or promoted to a supervisory or management position on or after January 1, 1999." This requirement for law enforcement personnel mirrors an existing supervisor/management training requirement for correctional personnel. Another new section in chapter 43.101 requires that the CJTC annually offer "an intensive training session on investigation of child abuse and neglect."

## **SEX OFFENDERS-- PUBLIC NOTIFICATION; RISK CLASSIFICATION**

CHAPTER 364 (ESSB 5759)

Effective Date: July 27, 1997

**NOTE: The following legislative update item on ESSB 5759 was authored by Assistant Attorney General, Erin Moore, who will be providing other LED entries in the future.**

### Introduction

Substitute Senate Bill 5759 significantly changes local law enforcement responsibility for sex offender release notifications. The new legislation shifts the primary responsibility for classifying sex offender risk from local law enforcement agencies to the releasing entities. Local law enforcement is still responsible for public notification but the new law provides concrete limits for

the scope of notice to be given based on the level of risk determined. And, for the first time, it directs the development of statewide model policies for public disclosure of sex offender information.

### Sex Offender Risk Classification

This legislation expressly applies to: (1) all offenders (adult and juvenile) convicted of sex offenses as defined in RCW 9.94A.030; (2) all sex offenders under the jurisdiction of the Indeterminate Sentence Review Board; (3) all persons committed as sexually violent predators or sexual psychopaths; and, (4) all persons adjudged either insane or incompetent to stand trial for sex offenses and subsequently committed to psychiatric institutions. The Department of Corrections, Department of Social and Health Services, and the Indeterminate Sentence Review Board, are required to review all available information about the offender's criminal history, crimes of conviction, institutional history and behavior (including both psychological evaluations and disciplinary reports), and treatment information. Based on this review, the releasing entity will assign a risk classification at either level I, II or III. Level I is for offenders who are deemed as low risk for reoffense. Level II offenders are those characterized as presenting a moderate risk of reoffense. Offenders whose risk assessment indicates high risk for reoffense are to be classified at Level III.

Once the releasing authorities have made the risk classification, they must provide appropriate law enforcement agencies the information necessary for public disclosure (including the risk classification) pursuant to RCW 4.24.550. These notices must be in narrative form and must include the offender's identity, his or her criminal history behavior, the releasing authority's risk assessment classification, and the reasons supporting that risk assessment classification.

Local law enforcement agencies may reassess risk classification and assign a different risk classification level to offenders released in their jurisdictions. If they determine a different risk classification level is appropriate, they must notify the releasing authority of the new risk classification level and provide the reasons supporting the different risk assessment classification.

### Public Notification Based on Classification Level

The new legislation significantly alters the sex offender notification statute (RCW 4.24.550) by prescribing the limits of notification based on the risk classification assigned.

**Level I.** Local law enforcement must share offender information with other law enforcement agencies for persons classified at risk level I (low risk of reoffense). Additionally, local law enforcement may disseminate relevant and necessary information to victims, witnesses, or community members who request information regarding sex offenders in their neighborhoods. Level I offenders may not be the subject of general public notification.

**Level II.** In addition to the groups identified for Level I offenders, local law enforcement may also disclose relevant and necessary information to schools, day care centers, family day care providers, entities (public and private) providing services to children, women, vulnerable adults, neighbors and community groups near the residence or places where the Level II is regularly found (i.e., school or work). Despite the wider scope of disclosure authorized for persons classified at risk level II (moderate risk of reoffense), level II offenders may not be the subject of general public notification.

**Level III.** Local law enforcement may disclose relevant and necessary information to the general public for those classified at risk level III (high risk of reoffense).

Model Policy Development

In order to establish statewide norms for the disclosure of sex offender information, the statute directs WASPC to develop model policies for law enforcement agencies to follow when disclosing information. These policies are to be developed by December 1, 1997. The Legislature directed WASPC to consult with the Department of Corrections, Department of Social and Health Services, the Indeterminate Sentence Review Board, the Washington State Council of Police Officers, local correctional agencies, the Washington Association of Prosecuting Attorneys, the Washington Public Defender Association, the Washington Association for the Treatment of Sexual Abusers, and victim advocates in developing these model policies.

The model policies must include recommendations for the content and form for community notification (balancing the offender's privacy interest against public safety concerns), methods for distributing notification, methods for follow-up notification to the community, methods for educating community residents on the proper use of sex offender information and consequences for misuse and harassment, and any other matters WASPC deems necessary.

Report to the Legislature

Finally, the Department of Corrections, Department of Social and Health Services, and the Indeterminate Sentence Review Board are each directed to prepare reports for the Legislature by December 1, 1998. These reports must detail the number of sex offenders released since the effective date of the new law and their classification levels. Additionally, the reporting agencies must indicate the number, locales, and circumstances under which local law enforcement agencies reclassified the risk level sex offenders.

**MANSLAUGHTER 1 AND 2 AS CLASS A AND B FELONIES**

CHAPTER 365 (SB 5938)

Effective Date: July 27, 1997

Classifications of manslaughter first and second degrees are increased to class A and B felonies, respectively. Corresponding seriousness level changes are made for these two crimes in the Sentencing Reform Act.

**WHITEWATER OUTFITTER REGULATION, GUIDE TRAINING**

CHAPTER 391 (SSB 5483)

Effective Date: January 1, 1998

Amendments are made to chapter 88.12 RCW to impose: (1) licensing requirements for "whitewater river outfitters" (as defined under the Act), and (2) training requirements for whitewater "guides" (as defined in the Act). Most of the mandates of this legislation take effect on January 1, 1998. Both DOL and the Washington Parks and Recreation Commission have special responsibilities under this Act.

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**BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS**

**“SEXUAL EXPLOITATION OF MINOR” PROVISION IN CHAPTER 9.68A DOES NOT INCLUDE SECRETLY VIDEOTAPING A MINOR TAKING A BATH** -- In State v. Grannis, 84 Wn. App. 546 (Div. II, 1997), a 2-1 majority of the Court of Appeals again applies a narrow reading to the law on sexual exploitation of a minor. The majority’s rulings go both to the question of whether evidence was sufficient to support a conviction and the question of whether probable cause of a crime was established through descriptions of certain visual depictions.

In the Grannis case, defendant was prosecuted under RCW 9.68A.070 for possession of visual matter depicting minors (persons under age 18) engaged in sexually explicit conduct. Grannis had been found in possession of videotapes: (1) depicting minor girls playing on a playground (showing their clothed genital-areas and breast-areas), and (2) depicting a minor girl taking a bath (apparently this videotape was made without the girl’s knowledge).

The analysis in the majority opinion in Grannis begins by stating the question before it and the approach the Court announced in the Division Two opinions in State v. Chester, 82 Wn. App. 422 (Div. II, 1996) **October ‘96 LED:15** and State v. Myers, 82 Wn. App. 435 (Div. II, 1996) **October ‘96 LED:14**:

For present purposes, then, the meaning of “sexually explicit conduct” turns on what constitutes an “[e]xhibition of the genitals or unclothed pubic or rectal areas of any minor. Or the unclothed breast of a female minor, for the purposes of sexual stimulation of the viewer.”

By itself, an exhibition is inanimate and without any purpose of its own. Necessarily, then, its purpose is the purpose of the person or persons who initiate, contribute to, or otherwise influence its occurrence. The initiator or contributor need to be the accused or the minor whose conduct is at issue. Whoever the initiator or contributor is, however, his or her purpose must be to sexually stimulate a viewer. If his or her purpose is different, the conduct will not be sexually explicit by virtue of RCW 9.68A.011(3)(e).

[Footnotes, citations omitted]

Then, after discussing the Court’s prior decisions in Chester and Myers, the majority concludes its analysis as follows:

Here, Count I is based on photographs showing the conduct of minor girls on a playground, and the conduct of one minor girl taking a bath. It is obvious and undisputed that one of the girls had a purpose of sexually stimulating a viewer, and there is no evidence that Grannis initiated, contributed to, or in any way influenced the girls’ conduct. Thus, the evidence does not show an exhibition of the genitals or breasts for the purpose of sexually stimulating a viewer, or that the girls engaged in “sexually explicit conduct” within the meaning of RCW 9.68A.011(3). As in Chester, where an essential conclusion was that a minor does not “engage in sexually explicit conduct” merely by exiting a shower or starting to get dressed, we hold here that a minor does not “engage in sexually explicit conduct” merely by playing on a playground, or merely by taking a bath.

Nothing said herein means that the Legislature could or could not criminalize conduct of the sort at issue in this case. We hold only that it did not do so when, in 1988 and 1989, it enacted and amended RCW 9.68A.070 and RCW 9.68A.011(3)(e). Those statutes require proof that a minor engaged in sexually explicit conduct, and that requirement is not satisfied by evidence showing only that a minor played on a playground or took a bath.

Judge Turner writes a dissent, as he did in the Chester and Myers cases. He argues:

A child need not be an exhibitionist or be posed to be a victim of sexual exploitation under RCW 9.68A.040 and 070. Covert filming of an innocent child's genitalia may constitute an exhibition. And if its purpose is sexual stimulation of a viewer, then it is punishable under these statutes. Here, the jury could infer sexual purpose from the covert camera operation and its focus on the girls' genitalia, buttocks, and breasts.

[Citation omitted]

Result: reversal of Grays Harbor Superior Court convictions for possessing visual matter depicting a minor engaged in sexually explicit conduct (two counts) and sexual exploitation of a minor (one count).

**LED EDITOR'S NOTE:** The State Supreme has granted review in the Chester and Myers cases cited above. The Grannis case is also pending in the State Supreme Court awaiting the Court's decisions in Chester and Myers.

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### **1994 FEDERAL GUN LAW AMENDMENTS -- RESTRAINING ORDER RESTRICTIONS**

In the December 1996 LED and the January 1997 LED, we addressed the then-recently-adopted restrictions on delivery, receipt, ownership or possession under 1996 amendments to the federal firearms laws for a person convicted at any time in a state or federal court of a "misdemeanor crime of domestic violence." An additional restriction under federal law, not addressed in the December and January LED's, or any other LED, is the bar adopted in 1994 on persons who are subject to certain court orders protecting persons in domestic relationships.

The 1994 amendments to federal firearms laws barred firearms delivery, receipt, ownership, or possession with respect to any person who:

[I]s subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such an intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;...

18 U.S.C. §§ 922(d)(8) and 922(g)(8).

The term "intimate partner" is defined at 18 U.S.C. § 921(a)(32) as follows:

The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

The language which appears in Washington domestic violence court order forms restraining persons from "causing physical harm, bodily injury, etc." appears to fit § 922(d)(8)(B)(ii) and § 922(g)(8)(ii). Thus, a person subject to a domestic violence or harassment order obtained by an "intimate partner" (as defined by federal law) with such restraining language would be subject to the federal firearms restriction while the order was in effect.

However, it must be noted that, under federal law, as set forth above, the firearms restriction **does not apply to "temporary orders" for protection which are issued ex parte, i.e., without notice to the respondent.** It should also be noted that, while there is some controversy on the following point, it appears that the restraining order prohibition of federal law **does not apply to law enforcement officers and military personnel carrying firearms in the course of their duties.** (To help to avoid disputes, officers who are respondents in such court actions may want to seek a specific authorization to carry a firearm in the course of their duties.) The 1994 federal gun law restriction relating to court order restraints does apply to such persons in most off-duty circumstances, however.

NOTE ALSO THAT THE 1996 CONGRESS TOOK A DIFFERENT APPROACH TO THIS ISSUE WHEN IT ADOPTED THE PROHIBITION RELATED TO MISDEMEANOR CONVICTIONS FOR CRIMES OF DOMESTIC VIOLENCE. THE 1996 BAR FOR THOSE WITH MISDEMEANOR DV CONVICTIONS DOES APPLY TO LAW ENFORCEMENT AND MILITARY PERSONNEL WHETHER THEY ARE ON OR OFF DUTY. SEE THE DISCUSSIONS OF THE 1996 FEDERAL GUN LAW CHANGES IN THE DECEMBER 1996 AND JANUARY 1997 LED'S.

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The Law Enforcement Digest is edited by Assistant Attorney General, John Wasberg, Office of the Attorney General. Editorial comment and analysis of statutes and court decisions express the thinking of the writer and do not necessarily reflect the opinion of the Office of the Attorney General or the Washington State Criminal Justice Training Commission. The LED is published as a research source only and does not purport to furnish legal advice.